

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE JOINT)
PETITION OF DUKE ENERGY INDIANA,)
INC. AND WIN ENERGY REMC PURSUANT) CAUSE NO. 43425
TO IND. CODE § 8-1-2.3-6 FOR APPROVAL)
OF CHANGES TO THE SERVICE AREA)
BOUNDARIES WITHIN U.S.G.S. FACET) APPROVED: MAR 12 2008
MAP E-20, AND FOR CONSENT PURSUANT)
TO IND. CODE § 8-1-2.3-4)

BY THE COMMISSION:

Aaron A. Schmoll, Administrative Law Judge

On January 18, 2008, Duke Energy of Indiana, Inc. ("Duke") and WIN Energy REMC ("REMC") (collectively "Joint Petitioners") filed a *Verified Joint Petition to Modify Service Area Boundaries* ("Joint Petition") with the Indiana Utility Regulatory Commission ("Commission"). Pursuant to Indiana Code Sections 8-1-2.3-4 and 8-1-2.3-6(2), the Joint Petition seeks Commission approval of the electric service area boundary changes to which Duke and REMC have mutually agreed, and REMC's consent to allow Duke to continue to provide electricity service outside of the new service boundaries. Joint Petitioners' agreement includes, among other things, agreement to: (1) change certain service area boundaries located on U.S.G.S. Facet Number E-20 in Vigo County, Indiana; and (2) allow Duke to continue to provide service to a sign board that will, after the change of service area boundaries, be within REMC's service area. Verifications of Earl Martin Zearbaugh, Manager of Distribution Design for Duke, and David A. Jones, CEO of REMC were attached to the Joint Petition.

The Commission, having considered the evidence and applicable law, now finds:

1. **Commission Jurisdiction.** Joint Petitioner Duke is a corporation organized and existing under the laws of the State of Indiana. Duke qualifies as a "public utility" under Indiana Code 8-1-2-1 and is engaged in the business of distributing, furnishing and selling retail electric service to the public in various counties in the State of Indiana, including Vigo County, and has charter authority to do so.

Joint Petitioner REMC is a rural electric membership corporation organized and existing under the laws of the State of Indiana. It is engaged in the business of distributing, furnishing and selling retail electric service to the public in various counties in the State of Indiana, including Vigo County, and has charter authority to do so. Each Joint Petitioner is an "electricity supplier" within the meaning of Indiana Code 8-1-2.3-2(b).

Joint Petitioners have sought the Commission's approval to change their service area boundaries pursuant to Indiana Code 8-1-2.3-6(2), which provides that the assigned service area boundaries of electricity suppliers may be changed upon a mutual agreement of the affected electricity suppliers and approval of this Commission.

Accordingly, the Commission has jurisdiction over the Joint Petitioners and the subject matter of their Joint Petition.

2. **Relief Sought.** Joint Petitioners seek approval of agreed-upon boundary changes and REMC's consent to Duke to provide electric service outside of Duke's assigned service area boundaries.

The electric service area boundaries proposed for modification are located in Vigo County, Indiana. Joint Petitioners' mutual agreement would modify the existing boundaries as depicted in Exhibit A, attached to the Joint Petition. These modifications would result in Duke and REMC trading service territory, as depicted in Exhibit A.

Joint Petitioners state that the proposed modification will not cause duplication of facilities, cause a waste of materials or resources, or cause uneconomic, inefficient or inadequate electric service to the public. There is no evidence to the contrary before the Commission in this proceeding.

Joint Petitioners also seek approval of REMC's consent to Duke to allow Duke to continue to serve a sign board that will be within REMC's service area following Commission approval of the agreed-upon boundary modification. Joint Petitioners agree that REMC's consent shall continue until such time as REMC is able to serve the signboard and as mutually agreed to by Duke and REMC.

3. **Notice.** Indiana Code 8-1-2.3-6(2) provides:

If notice of a verified request for a change of boundary lines by mutual agreement under this subdivision is published in a newspaper of general circulation in every county in which the boundary lines are located and an affected electricity customer does not request a hearing within twenty (20) days of the last date of publication, the commission may approve the change without a hearing.

The evidence shows that notice of Joint Petitioners' intent to file for a change of boundary line located on U.S.G.S. Facet Number E-20 was published on January 26, 2008, in the *Tribune Star*. This is a newspaper of general circulation in Vigo County, which is the county in which the affected boundary line is located. Proof of publication of the notice was filed with the Commission on March 6, 2008, and is hereby incorporated into the record of this Cause. Twenty (20) days have passed since the date of publication of the notice and no affected electricity

customer has requested a hearing. Therefore, pursuant to Indiana Code 8-1-2.3-6(2), the Commission may approve the requested boundary line change without a hearing.

4. **Approval of Requested Boundary Modifications.** Based upon the foregoing findings, the Commission concludes that the agreed-upon changes to Joint Petitioners' respective assigned service area boundaries located on U.S.G.S. Facet Number E-20, as specifically depicted in the Joint Petition and exhibits attached thereto, will promote economical, efficient and adequate electric service to the public consistent with the legislative policy set forth in Indiana Code 8-1-2.3-1 and, therefore, should be approved.

5. **Approval of Written Consent.** Joint Petitioners also seek relief pursuant to Indiana Code 8-1-2.3-4(a) which, in part, provides:

As long as an electricity supplier continues to provide adequate retail service, it shall have the sole right to furnish retail electric service to each present and future consumer within the boundaries of its assigned service area and no other electricity supplier shall render or extend retail electric service within its assigned service area unless the electricity supplier with the sole right consents thereto in writing and the commission approves.

Upon Commission approval of the service boundary changes, REMC has the sole right to furnish retail electric service to its service area. However, in its Joint Petition, Joint Petitioners state that there is an existing signboard currently served by Duke, and accordingly, REMC has consented to Duke's continued service of this signboard.

In *In re Joint Petition of Electricity Suppliers*, Cause No. 42868 (Sept. 28, 2006), the Commission noted that requests for approval of consents of temporary extraterritorial retail service, under Ind. Code Section 8-1-2.3-4, have been considered and acted upon by the Commission following a hearing. However, the Commission acknowledged that if certain conditions were met, it may be appropriate to act upon requests for approval of consent to serve without a hearing, "as long as such petitions evidence publication of the request in each impacted county ten (10) days prior to Commission action." *Id.* at 5. In this case, notice of the filing of the Petition was published in the *Tribune Star*, on January 26, 2008. More than ten days have passed since publication of the notice, and no hearing was requested. Accordingly, the Commission did not conduct a hearing on the Joint Petitioner's request for approval of REMC's consent to allow Duke to continue serving the existing signboard in REMC's service area.

Based upon the law and evidence discussed above, the Commission finds that REMC's consent to allow Duke to provide electric service to the existing signboard within REMC's service area should be approved.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Joint Petitioners' agreed-upon service area boundary line change as set forth above and in the Joint Petition and exhibits attached thereto are hereby approved.

2. Within thirty (30) days of the date this Order is approved, Joint Petitioners shall coordinate with Commission Technical Staff to update the service territory mapping system to reflect the modified service area boundaries approved by this Order.

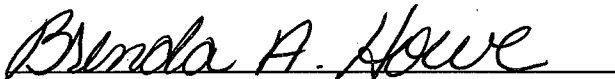
3. REMC's consent to allow Duke to provide electric service to a signboard within REMC's service area is hereby approved. Within thirty (30) days of the date that service is transferred from Duke to REMC, Duke shall file notice with the Commission that it is no longer providing electric service to the affected signboard.

4. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, SERVER, AND ZIEGNER CONCUR:

APPROVED: MAR 12 2008

**I hereby certify that the above is a true
and correct copy of the Order as approved.**

A handwritten signature in cursive script, reading "Brenda A. Howe", is written over a horizontal line.

**Brenda A. Howe
Secretary to the Commission**